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Study on national constitutions and the United Nations Declaration on the Rights of Indigenous Peoples

Note by the secretariat

Pursuant to a decision of the Permanent Forum on Indigenous Issues at its tenth session (see E/2011/43, para. 101), Megan Davis, Simon William M'Viboudoulou, Valmaine Toki, Paul Kanyinke Sena, Edward John, Álvaro Esteban Pop Ac and Raja Devasish Roy, members of the Forum, undertook a study on national constitutions and the United Nations Declaration on the Rights of Indigenous Peoples, with a view to assessing the nature and extent of the inclusion of indigenous peoples' rights in national constitutions with specific reference to the rights affirmed in the Declaration, which is hereby submitted to the Forum at its twelfth session.

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Study on national constitutions and the United Nations Declaration on the Rights of Indigenous Peoples[1]

I. Introduction

1. At its tenth session, in 2011, the Permanent Forum on Indigenous Issues mandated a study on the nature and extent of the inclusion of the human rights of indigenous peoples in national constitutions, with reference to the rights affirmed in the United Nations Declaration on the Rights of Indigenous Peoples.

2. The present study provides insight into the most recent developments in those States that have recognized indigenous rights in their constitutions. It investigates the ways in which States are currently carrying out constitutional reform processes that include recognition of the rights and culture of indigenous peoples. In part II, the provisions of the Declaration that are relevant to national constitutions are considered, while part III contains a summary of recognition of indigenous rights or indigenous peoples in a sample of constitutions globally to demonstrate how the constitutional reform process has been or can be undertaken. Part IV contains a more detailed consideration of current constitutional reform processes in Australia, Bangladesh, Kenya, Nepal and New Zealand. Part V comprises conclusions and recommendations.

II. United Nations Declaration on the Rights of Indigenous Peoples and constitutional recognition

3. The Declaration contains provisions that are relevant to the issue of constitutional recognition of indigenous peoples. These are:

(a) Article 3, which states that indigenous peoples have the right to self-determination and that, by virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development;

(b) Article 18, which states that indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions;

(c) Article 19, which states that States are to consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

4. Constitutions are the supreme law of most countries. While they can be both written and unwritten, countries have, since the Second World War, tended to adopt written constitutions. Over the past few decades, many States have recognized indigenous peoples in their constitutions. Recognition can be both weak and strong. A weak form of recognition may be a non-binding form of words that recognizes the

[1] The authors wish to acknowledge the invaluable assistance that they received in drafting the present study from John C. Scott, Daniel Cabello Llamas and Patricia Bittner, from the Center for Public Service Communications, and Dennis Mairena, from the Centro para la Autonomía y Desarollo de los Pueblos Indígenas.

presence of indigenous peoples within a State, while a strong form of recognition may involve entrenchment of indigenous peoples' rights, such as treaty rights or land rights, or entrenchment of a prohibition on racial discrimination. Constitutional recognition is regarded as an important symbolic and substantive development that is about not only entrenchment of substantive indigenous rights but also improvement of well-being. As one indigenous leader from Australia explains:

> I have come to think of national constitutions as the ultimate framework within which the wellbeing — or un-wellbeing — of a nation's citizens is provided for. For it is the national constitution that defines how a society is to be governed and the place of the citizen and his or her relationship with other citizens and the country's institutions.[2]

5. This idea has been supported by the Royal Australian and New Zealand College of Psychiatrists, which identifies an association between lack of constitutional recognition and the socioeconomic disadvantage of indigenous peoples. In particular, the College argues that recognition is a critical step to support the improvement of indigenous mental health and that the lack of acknowledgement of a people's existence in a country's constitution has a major impact on their sense of identity and value within the community and perpetuates discrimination and prejudice, which further erodes the hope of indigenous people.[3]

III. Recognition of indigenous rights in constitutions

6. The present section identifies the ways in which countries comply with the above-mentioned articles of the Declaration. Not all the constitutions listed comply with each article. Some address only parts of various articles. The list of countries selected herein is not an exhaustive list of all countries that incorporate protection of indigenous rights into their constitutions. Rather, the list is representative of the range of ways in which such rights are constitutionally recognized, both regionally and globally.

A. Article 3 of the Declaration: right to self-determination

Arctic

7. Article 2 of the Constitution of Sweden provides that the opportunities of the Sami people and ethnic, linguistic and religious minorities to preserve and develop a cultural and social life of their own are to be promoted. Article 17, dealing with freedom of trade, provides for the right of the Sami population to practise reindeer husbandry.

8. The Constitution of Finland recognizes the right of the indigenous Sami, in addition to Roma and other groups, to maintain and develop their own languages

[2] Noel Pearson, "Constitutional reform crucial to indigenous wellbeing", *The Australian*, 24 December 2011. Available from www.theaustralian.com.au/national-affairs/opinion/constitutional-reform-crucial-to-indigenous-wellbeing/story-e6frgd0x-1226229707704.

[3] Expert Panel on Constitutional Recognition of Indigenous Australians, *Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution: Report of the Expert Panel* (Canberra, January 2012), p. 40. Available from www.youmeunity.org.au/final-report.

and cultures. Section 121 stipulates that, in their native region, the Sami have linguistic and cultural self-government.

9. Article 110a of the Constitution of Norway states that it is the responsibility of the State to create conditions enabling the indigenous Sami people to preserve and develop its language, culture and way of life.

Central and South America

10. Article 2 of the Constitution of Mexico declares that the right to self-determination of indigenous peoples is to be granted within a general framework of autonomy according to the Constitution and in a way that preserves national unity. The Constitution also provides that the law is to protect and promote the development of indigenous languages, cultures, customs, resources and specific forms of social organization. Members of indigenous groups are also guaranteed effective access to the judiciary.

11. The Constitution of Brazil contains a chapter on indigenous peoples' rights. Article 210 recognizes that a minimum curriculum should be established in primary schools in order to foster respect for cultural values and stipulates that primary education in indigenous communities is to ensure the use of the native tongue. According to article 231, there is to be recognition of the social organization, customs, languages, beliefs and traditions of indigenous peoples, in addition to their original rights to the lands that they traditionally occupy.

12. Article 2 of the Constitution of Ecuador recognizes indigenous languages as part of the national culture. Article 84 guarantees the dignity of indigenous peoples and nationalities. Article 242 indicates that indigenous regions are to be organized as territorially distinct, while article 57 accords indigenous peoples the right to exercise their own legal systems.

13. Indigenous peoples are recognized in the Constitution of the Plurinational State of Bolivia. Article 5 provides that indigenous languages are official languages together with Spanish and are to be acknowledged in a multilingual education system. Article 30 provides that indigenous peoples have the right to live according to their cultural identity, spiritual beliefs, customs and cosmologies. They also have the right to self-determination in the form of collective title to their lands, protection of sacred places, and respect and promotion of traditional knowledge, traditional medicine, rituals, symbols and clothing, and collective intellectual property.

Russian Federation

14. Article 69 of the Constitution of the Russian Federation guarantees the rights of indigenous minority peoples in accordance with universally recognized principles and norms of international law and international treaties and agreements signed by the Russian Federation.

North America

15. Section 35 of the Constitution of Canada recognizes and affirms existing aboriginal and treaty rights in Canada with regard to land claims. While the section does not specifically provide for indigenous self-government, Government policy

has considered that right to exist thereunder since 1995.[4] Section 25 operates to shield pre-existing aboriginal rights so that individual rights protected by the Constitution do not limit or otherwise invalidate aboriginal rights. In 2010, the Government endorsed the Declaration, recognizing that it had much in common with aboriginal and treaty rights enshrined in the Constitution.[5]

16. The Constitution of the United States of America established a tripartite federation of sovereign Indian tribes, state governments and a federal Government. The ninth and tenth amendments to the Constitution can be interpreted as protecting inherent self-government rights of Indian tribes. In 2010, after a multi-agency review of the Declaration and in consultation with tribal leaders and with outreach to other stakeholders, the Declaration was federally endorsed as being consistent with the existing recognition of Indian self-determination.[6]

Africa

17. Section 6 of the Constitution of South Africa recognizes the historically diminished use and status of indigenous languages, stipulating that the State must take practical and positive measures to elevate the use of those languages.

Asia

18. The Constitution of the Philippines is one of the most progressive constitutions in South-East Asia, with several specific provisions relating to indigenous peoples. Article XII (sect. 5) provides that the State is to protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social and cultural well-being. Article XIV (sect. 17) provides that the State is to recognize, respect and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions and institutions and is to consider these rights in the formulation of national plans and policies. Article X (sect. 1) demarcates autonomous regions in the Cordilleras and in Muslim Mindanao.

19. There are special quotas stipulated in the Constitution of Malaysia for public office positions and licences for the indigenous peoples of Sabah and Sarawak States (arts. 153, 161, 161A 161B and 161E). Affirmative action provisions for indigenous peoples safeguard against discrimination (arts. 8 and 161A (5)).

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[4] Aboriginal Affairs and Northern Development Canada, "The Government of Canada's approach to the implementation of the inherent right and the negotiation of aboriginal self-government", 15 September 2010. Available from www.aadnc-aandc.gc.ca/eng/1100100031843/1100100031844.

[5] Centre for International Policy Studies, "Canada and UNDRIP: moving forward on indigenous diplomacy", 3 November 2011. Available from http://cips.uottawa.ca/canada-and-undrip-moving-forward-on-indigenous-diplomacy-2/.

[6] National Congress of American Indians, "International issues". Available from www.ncai.org/policy-issues/tribal-governance/international-issues.

B. Article 18 of the Declaration: right to have representative decision-making bodies

Arctic

20. Section 28 of the Constitution of Denmark allocates parliamentary positions to representatives of the Faroe Islands and of Greenland (a self-governing overseas administrative division of Denmark since 1979).

Central and South America

21. Article 7 of the Constitution of Colombia recognizes and protects the ethnic and cultural diversity of the State. Article 330 provides that indigenous territories are to be governed by councils formed and regulated in accordance with the customs of the community. Article 246 states that indigenous authorities may exercise their authority within their territorial jurisdiction in accordance with their own laws and procedures.

Asia

22. The Constitution of India provides for legislative positions for the members of scheduled tribes and castes (arts. 330 and 332), the establishment of autonomous district and regional councils (sixth schedule) and the reservation of places in public service for members of scheduled tribes and castes (art. 16 (4A)).

C. Article 19 of the Declaration: right to offer or withhold consent regarding State decisions affecting indigenous peoples

Central and South America

23. The Constitution of Ecuador recognizes the right of indigenous peoples to be consulted on the exploration and exploitation of natural resources on indigenous lands (art. 57 (7)) and the right to maintain, develop and manage their cultural and historical heritage (art. 57 (13)).

24. The Constitution of the Plurinational State of Bolivia states that prior consultation with indigenous peoples regarding matters that concern them is a State obligation, in particular with regard to the exploitation of non-renewable natural resources in indigenous territories (arts. 403 and 394).

Africa

25. According to article 36 of the Constitution of Uganda, minorities have the right to participate in decision-making processes and to have their views and interests taken into account in the making of national plans and programmes.

Asia

26. Apart from the granting of statehood and the establishment of district-level and regional-level councils in north-east India, the Constitution of India contains several other measures to protect the integrity of the north-eastern indigenous peoples referred to as "scheduled tribes". They include a provision preventing the federal legislature from legislating regarding land ownership or the social and religious practices of the indigenous peoples of Nagaland and Mizoram States

without the consent of the state legislative assembly concerned (arts. 371A and 371G) and a requirement to consult tribal members of legislative bodies prior to legislation concerning scheduled areas (fifth schedule).

27. The Constitution of Malaysia recognizes the autonomous authority of the States of Sabah and Sarawak with regard to land-related legislation (arts. 95B, 95D and 95E).

IV. Constitutional developments towards the recognition of indigenous rights

28. The present section focuses on the measures that countries are taking to incorporate the provisions outlined in the Declaration into their constitutions. Again, this list is not a definitive list of such attempts, but rather provides a global sample of current initiatives that are proving successful, partially successful or are still to be evaluated.

A. Article 3 of the Declaration: right to self-determination

Africa

29. Kenya is making various constitutional changes regarding the rights of indigenous peoples. A "marginalized community" is defined variously in the interpretation clause of the Constitution as a traditional community that, out of a need or desire to preserve its unique culture and identity from assimilation, has remained outside the integrated social and economic life of Kenya as a whole; an indigenous community that has retained and maintained a traditional lifestyle and livelihood based on hunter or gatherer economy; and a community, whether nomadic or settled, that, because of its relative geographic isolation, has experienced only marginal participation in the integrated social and economic life of Kenya as a whole (art. 260). The Constitution now encompasses the concept of self-determination as outlined in the Declaration by recognizing the need or desire of those communities to preserve their unique cultures and identities (art. 174).

30. Article 7 obliges the State to promote and protect the diversity of language of the people of Kenya and to promote the development and use of indigenous languages. Article 11 recognizes culture as the foundation of the nation and obliges the State to promote all forms of cultural expression through, among others, literature, the arts, traditional celebrations, science, communication, mass media, publications and libraries. The State is also obliged to recognize the role of indigenous technologies in the development of the nation, to promote the intellectual property rights of the people of Kenya and to enact legislation that will ensure that communities receive compensation or royalties for the use of their cultural products. Legislation should also be enacted to recognize and protect the ownership of indigenous seeds and plant varieties, their genetic and diverse characteristics and their use by communities.

31. Article 61 of the Constitution categorizes land as public, community-owned or private. Article 63 states that community land is to be vested in communities identified on the basis of ethnicity, culture or other similar attributes. Such land includes that lawfully held in the name of group representatives, that lawfully

transferred to a specific community and any other land declared to be community land by an act of Parliament. It also includes land lawfully held, managed or used by specific communities as community forests, grazing areas or shrines, and ancestral land and land traditionally occupied by hunter-gatherer communities. There are several caveats. For example, community land is not to be disposed of or used except under the terms of legislation. Furthermore, under article 66, the State may still regulate the use of any land in the interests of defence, public safety, public order, public morality, public health or land-use planning.

Asia

32. Until it was amended in 2011, there were no specific references to the indigenous peoples of Bangladesh in the national Constitution. Their presence was only indirectly acknowledged therein through the affirmative action provisions on special measures for what were termed the "backward section of citizens" (arts. 14, 28 (4) and 29 (3)). Following the fifteenth amendment, the Constitution mandates that the State is to take steps to protect and develop the unique local culture and traditions of the tribes, minor races, ethnic sects and communities.

33. The status of indigenous peoples in the Constitution of Pakistan, including from 1947 to 1971 when Bangladesh was part of Pakistan, has varied. From 1947 to 1962, the Chittagong Hill Tracts and the greater Mymensingh area were included in the list of excluded areas, pursuant to section 92 of the Government of India Act 1935. Excluded areas were governed under special regulations and laws of general national application were extended to these areas only sparingly or in modified form. The special regulations recognized the rule of traditional rulers, chiefs and headmen and their invoking of customary law in their respective areas of jurisdiction. Entry into traditional lands and acquisition of land rights by outsiders was forbidden or restricted, and money-lending and trading introduced by outsiders was also strictly regulated.[7]

34. From 1947 to 1971, the partially excluded areas, such as in Mymensingh, Bangladesh, and in Jharkhand, Orissa, Madhya Pradesh and several other states of peninsular India, had a larger number of general laws applied to them, with a stronger role played by the central Government. Correspondingly, the role and status of the traditional indigenous institutions in those areas were less prominent than in the excluded areas. During the British rule of India (including present-day Bangladesh, India and Pakistan), all those areas enjoyed the status of exclusive areas, given that parts of those regions were (and still are) populated primarily by indigenous peoples (including in the States of Arunachal Pradesh, Meghalaya, Nagaland and Mizoram). Earlier, the excluded and partially excluded areas were regarded as "backward tracts" (Government of India Act 1915, sect. 52A) and, yet earlier, as "scheduled districts" (Scheduled Districts Act 1874).

35. In the Constitution of 1962, excluded areas were redefined as tribal areas. The greater Mymensingh area was dropped from the list of tribal areas (although, it should be noted, by that time the indigenous people of the area had been reduced to a minority on account of unrestricted immigration), but the Chittagong Hill Tracts were retained, along with Dir, Chitral and several other places now located in

[7] Zainul Aidin Ahmad, "Excluded areas under the new Constitution", Congress Political and Economic Studies, No. 4 (Allahabad, Ashraf, 1937).

Khyber Pakhtunkhwa Province, Pakistan. Through a constitutional amendment in 1964, the tribal area status of the Chittagong Hill Tracts was revoked, in violation of article 223 of the Constitution, which guaranteed consultations with the representatives of an area prior to removal of such a status. The Chittagong Hills Tract became part of Bangladesh when the country gained independence in 1971. The Chittagong Hill Tracts Accord, signed between the largest regional party of the indigenous peoples, Parbatya Chattagram Jana Sanghati Samiti, and the Government of Bangladesh in 1997, revived a measure of autonomy and self-rule, but not the special constitutional status of the region. The absence of express constitutional safeguards has led to the minoritization of the indigenous peoples in their ancestral homeland, including through population transfer of non-indigenous settlers, and has visibly weakened their self-government system, their land and resource rights, and their political, social and cultural integrity.[8]

36. Nepal is in the process of adopting a new constitution after having converted from a monarchy to a republic. Its interim draft constitution includes provisions for a degree of self-determination with regard to indigenous tribes.

Pacific

37. For decades there has been advocacy in Australia for recognition of indigenous peoples in the Constitution, given that they are not currently recognized. Sections 25 and 51 (xxvi) are the target of this advocacy. Section 25 allows states to exclude certain races from voting and has previously been used to pass laws excluding Aboriginal people.[9] Section 51 (xxvi) is the source of the power that enables Parliament to make laws for Aboriginal people. The section permits the passing of laws with regard to people of any race for whom it is deemed necessary to make special laws. This power can therefore support laws that are beneficial or adverse. Given that Australia has no bill of rights, the federal Government has essentially unfettered power to pass racially discriminatory laws that can have a negative impact on indigenous peoples. Accordingly, constitutional entrenchment of a prohibition on racial discrimination is viewed as being central to indigenous recognition in Australia:

> Elimination of racial discrimination is inherently related to Indigenous recognition because Indigenous people in Australia, more than any other group, suffered much racial discrimination in the past. So extreme was the discrimination against Indigenous people, it initially even denied that we existed. Hence, Indigenous Australians were not recognised. Then, Indigenous people were explicitly excluded in our Constitution. Still today, we are subject to racially targeted laws with no requirement that such laws be beneficial, and no prohibition against adverse discrimination.[3]

38. Both the current Government and the opposition are committed to pursuing recognition of Aboriginal and Torres Strait Islander peoples in the Constitution.[10] In

[8] Jenneke Arens and Kirti Chakma, "Bangladesh: indigenous struggle in the Chittagong Hill Tracts", 2002. Available from www.conflict-prevention.net/page.php?id=40&formid=73&action=show&surveyid=14.

[9] Anthony Gray, "The guaranteed right to vote in Australia", *Queensland University of Technology Law and Justice Journal*, vol. 7, No. 2 (2007).

[10] George Williams, "Pathway to referendum success is now clear", *The Sydney Morning Herald*, 17 January 2012. Available from www.smh.com.au/opinion/politics/pathway-to-referendum-success-is-now-clear-20120116-1q2yk.html.

2010, the Prime Minister established an expert panel to consider options for a referendum on a constitutional amendment for such recognition. The panel comprised indigenous and non-indigenous experts who consulted the Australian people and Aboriginal and Torres Strait Islander communities throughout 2010 and recommended a number of amendments to the Constitution, including that sections 25 and 51 (xxvi) should be repealed and that a new section 51A should be inserted to recognize Aboriginal and Torres Strait Islander peoples and to preserve the Government's ability to pass laws for their benefit. In addition, the panel recommended the insertion of a new section 116A, banning racial discrimination, and of a new section 127A, recognizing that Aboriginal and Torres Strait Islander languages were the first tongues of Australia, while confirming that English is the national language.[3]

39. New Zealand is one of only three countries without a written constitution, the others being Israel and the United Kingdom of Great Britain and Northern Ireland. Although New Zealand inherited its Constitution from the United Kingdom, the two systems have evolved differently. The sources of the Constitution of New Zealand include the prerogative powers of the Queen, the Constitution Act 1986, the New Zealand Bill of Rights Act 1990, decisions of the courts, the Treaty of Waitangi and unwritten conventions regulating how the relationships between these sources work. The Treaty of Waitangi was an agreement entered into between the British Crown and the indigenous Maori peoples of New Zealand in 1840. The English-language version cedes sovereignty, whereas the Maori-language version does not. The principles of the Treaty are often referred to in New Zealand legislation (see, for example, the Conservation Act 1987, sect. 4, and the State-Owned Enterprises Act 1986, sect. 9) and in policy documents (such as the New Zealand Disability Strategy 2001, which is expressly consistent with the relevant principles of the Treaty), rather than the text of the Treaty itself. Although recognition by the courts of the Treaty as a constitutional document indicates some recognition of indigenous rights in the Constitution, under the current constitutional arrangement any recognition of indigenous peoples' rights is subordinate to the central doctrine of parliamentary supremacy.

B. Article 18 of the Declaration: right to representative decision-making bodies

Africa

40. On 4 August 2010, 68 per cent of eligible Kenyans voted to support the proposed new constitution, including many from indigenous communities[11] The new Constitution provides a clean break from the past with several avenues for the pursuit and strengthening of indigenous peoples' personal and collective rights. Kenya is now a presidential democracy with a two-tier parliament that comprises a senate and a parliament. The system of government is a devolved system, with indigenous peoples being granted authority over many of the 47 new counties (with elected governors). This will enable them to make decisions that directly affect them. In the counties in which indigenous peoples will be the minorities, special

[11] Tim Murithi, "Kenya's constitutional renewal: a post-referendum analysis". Available from www.currentanalyst.com/index.php/conflictsregional/136-kenyas-constitutional-renewal-a-post-referendum-analysis.

provisions have been made to accommodate the interests of minorities in such situations. Chapter IV of the Constitution (arts. 19-59) recognizes a number of rights and freedoms of indigenous peoples. Article 56 specifically provides for affirmative action for minorities and marginalized groups through programmes designed to ensure that they participate and are represented in governance and other spheres of life and are provided with special educational and economic opportunities with access to employment.

Asia

41. The interim Constitution of Nepal provides for proportionate representation of indigenous people in legislative bodies (arts. 45 and 64), the formation of commissions, including on indigenous peoples and minority groups (art. 154) and recognition of the customary laws of indigenous peoples and of language and cultural rights (art. 17). The extent to which those measures, including the recognition of autonomy through the formation of ethnic states, will ultimately be retained or enforced remains to be seen, however.

Pacific

42. The Maori electorates, also known as Maori seats, are a special category of electorate that gives reserved positions to representatives of Maori in the Parliament of New Zealand. They are treasured as a unique constitutional arrangement. The Maori electoral roll ensures an indigenous Maori perspective in the legislative process. The seats remain subject to controversy, however, in that it has been suggested that they are undemocratic and afford special status to Maori. Equality and multiculturalism arguments ignore Maori as indigenous peoples and partners under the Treaty of Waitangi. As part of the Relationship Accord and Confidence and Supply Agreement between the National Party and the Maori Party, signed on 16 November 2008, it was agreed to establish a group to consider constitutional issues pertaining to the indigenous peoples of New Zealand. In August 2011, a constitutional advisory panel was mandated to lead a public discussion on constitutional issues and report back to the Government by September 2013. The relevant matters that this group is considering include the size of Parliament and Maori representation; Maori electoral participation; Maori seats in Parliament and local government; and the role of the Treaty of Waitangi within constitutional arrangements.

C. Article 19 of the Declaration: right to offer or withhold consent regarding State decisions affecting indigenous peoples

Africa

43. The Constitution of Kenya charges the State with protecting the intellectual property rights of indigenous peoples and enhancing indigenous knowledge regarding biodiversity and genetic resources, in addition to encouraging public participation in the management, protection and conservation of the environment (art. 69).

Pacific

44. In February 2011, a working group on constitutional transformation was established in New Zealand to engage with Maori and to work on developing a

model constitution for New Zealand based on Maori protocol and culture, the 1835 Maori Declaration of Independence and the Treaty of Waitangi. The group has agreed that the process must be "for Maori, by Maori" and that it will invite meetings with the Government only once a satisfactory model for constitutional transformation has been agreed to by Maori representatives.[12] The group will invite Maori to bring their thoughts and ideas on what they believe their ancestors anticipated when they agreed to the Declaration of Independence and the Treaty of Waitangi.

45. The unwritten Constitution of New Zealand does not recognize any inherent rights of Maori as indigenous peoples. The group recommends that any constitutional transformation include and recognize the fundamental rights of Maori as indigenous peoples in accordance with the Declaration.[12]

V. Conclusions and recommendations

46. **Indigenous peoples should be recognized in national constitutions as such, including with specific mention of their rights. States that do not currently recognize indigenous peoples or indigenous rights in their constitutions should move towards a constitutional reform process in consultation with indigenous peoples.**

47. **States should entrench the Declaration in national constitutions and adopt it as the framework for the development and implementation of the rights of indigenous peoples, with a special focus on article 3.**

48. **The African Commission on Human and Peoples' Rights should support the action of its Working Group of Experts on the Rights of Indigenous Populations/Communities in Africa by increasing its budget.**

49. **States should engage in dialogue with one another in order to gain greater insight into the importance of recognizing the rights of indigenous peoples.**

50. **Civil society should be more active in advocating the implementation of the Declaration.**

51. **States should mobilize resources in order to carry out awareness campaigns and train decision makers, United Nations bodies, civil society organizations, indigenous peoples and other stakeholders in the constitutional recognition of indigenous rights.**

52. **States should revoke existing constitutional measures that discriminate against indigenous peoples. They should include protective safeguards, in particular with regard to racial non-discrimination, in their constitutions in consultation with the indigenous peoples of their countries.**

53. **States should adopt organic and enabling legislation, and corresponding executive, policy and programmatic action, to implement constitutional provisions that safeguard the rights of indigenous peoples, in consultation with their indigenous peoples.**

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[12] Margaret Mutu and Moana Jackson, "Iwi to hold own constitutional review", 15 December 2010. Available from www.converge.org.nz/pma/cr151210.htm.